

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JOHN C. BOHLINGER**, on January 30,
2003 at 3:05 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. John C. Bohlinger, Chairman (R)
Sen. John Esp, Vice Chairman (R)
Sen. Jerry W. Black (R)
Sen. Brent R. Cromley (D)
Sen. Jim Elliott (D)
Sen. Kelly Gebhardt (R)
Sen. Bill Glaser (R)
Sen. Rick Laible (R)
Sen. Jeff Mangan (D)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Phoebe Olson, Committee Secretary

Please Note:

These are summary minutes. Testimony and discussion are
paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:

Executive Action: HB 132; SB 89; SB 211; SB 197; SB
222; SB 227

EXECUTIVE ACTION ON HB 132

Motion/Vote: SEN. JEFF MANGAN moved that HB 132 BE CONCURRED IN.
Motion carried unanimously.

EXECUTIVE ACTION ON SB 89

Motion: SEN. KELLY GEBHARDT moved that SB 89 DO PASS.

Discussion:

SENATOR JOHN ESP said he had not been there for the hearing and wondered if someone on the committee could explain what the bill did.

SENATOR BILL GLASER explained that because of the fiscal note, if it was past out of committee it would surely go to finance and claims for review.

SENATOR RICK LIABLE said that many of the county commissioners were in favor of the bill. Basically all it said was if somebody had some unclaimed tax refund, or had overpaid their taxes, rather than the money going back to the state it would stay in the county coffers.

SENATOR GEBHARDT added that it would apply to witness fees and juror fees, if they received a check and had not cashed it with in 60 or 90 days it would go into one of those accounts as well.

Vote: Motion carried 9-2 with ESP and GLASER voting no.

EXECUTIVE ACTION ON SB 112

Motion: SEN. MANGAN moved that SB 112 DO PASS.

Discussion:

Leanne Kurtz said that amendments SB011201.ads were accounting style amendments and did not change the substance of the bill. She explained that amendment SB011201.alk removed the provision that a search and rescue mission that is reimbursed through any other search and rescue organization is not eligible.

Motion: SEN. MANGAN moved that **AMENDMENT SB011201.ACS DO PASS.**

Discussion:

Leanne Kurtz repeated what the amendments would do.

Vote: Motion **carried 10-0.**

Motion: SEN. CAROLYN SQUIRES moved that **AMENDMENT SB011201.ALK DO PASS.**

Discussion:

Leanne Kurtz reiterated what the amendment would do.

Vote: Motion **carried 10-0.**

Motion: SEN. MANGAN moved that **SB 112 DO PASS AS AMENDED.**

Discussion:

SENATOR MANGAN said he was concerned about the amounts in the bill, page 1, line 28, and page 2, line 4. He thought they seemed very low. He didn't think they did the bill justice. He was not sure what an appropriate amount was. Maybe 10,000 and 5,000 would be more appropriate to the cost of the equipment and these type of rescues. He repeated that \$3,000 for a search and rescue was ridiculously low.

SENATOR ESP said he had reservations about the whole concept. He said he was not comfortable with the money being added to conservation licenses. He said it may be good for this particular purpose but he was afraid it would open the door to every group that had a tie to conservation licenses wanting 50 cents or whatever added. He said that could lead to very expensive conservation licenses. He said he didn't think they had received a ruling on whether this would effect federal grant money.

SENATOR SQUIRES said she had heard that there may be another bill coming from the house. She said she did not want to kill Senator McCarthy's bill but if they were positive the other bill was coming it might be best to leave this unacted upon until they could compare it to the other bill.

SENATOR GLASER said it might be better to understand what was in the other bill and how it effected this bill. He said the other bill involved one time payments on most of the things covered in

this bill. If there was now a one time payment in that bill there would only be a one time collection in this bill, and he was concerned with that. He said if the other bill passed, the money would not be provided for this bill whether they were in support of it or not.

SENATOR MIKE WHEAT thought maybe they should make a substitute motion to indefinitely postpone the bill.

SENATOR BILL GLASER replied he didn't think that would be the right motion because that was meant to get rid of the bill. He thought the proper motion would be to table the bill. It seemed to him that they should say if the bill in the house prevailed through the whole process that this bill should have larger fees in it since they would only collect that fee once, except when a new vehicle was purchased. He thought they should spend a little time on this bill and put some contingency language in the bill so if the other bill passed the fees would be heightened three times. He wanted to make sure both bills would work together.

SENATOR JIM ELLIOT asked if it was the committees intention to do some work on the bill at the present time, or if they would be amenable to postponing discussion on the bill.

SENATOR GLASER said he would not want to postpone it for more than a week or week and a half at the most, or it would be put in danger of meeting transmittal.

Motion: **SEN. ELLIOTT** moved **SB 112**, be postponed till day thirty.

Discussion:

Leanne Kurtz explained that would mean they just wouldn't act on the bill right now. She went on that after transmittal the staff would receive a list of all the code sections that the bills amended and they would look at those to make sure they were not conflicting. At that point they would propose coordinating language. She said the committee could work on it now, but if they passed it out now, they could be coordinated later through a conference committee.

SENATOR ELLIOT asked if would be possible to create a committee bill from the two bill.

SENATOR GLASER replied that would not be possible.

SENATOR LIABLE said that the bills looked much different from each other. He said he had concerns with the structure of the bill opposed to how much money there was. He said he was

concerned with how the money was actually distributed, and how it was applied for. He said he would go along with what the committee wanted to do, but he had problems with the bill as it stood.

SENATOR BRENT CROMLEY asked if both the problems noted in the fiscal note were addressed by the amendments they had made.

Leanne Kurtz said she believed that was the issue that Senator Esp had mentioned about the diversion of conversation license funds.

SENATOR MANGAN said the other bill was not similar to this except for the fact that the money from this bill comes from how the other bill is changing the way those monies are collected. He stated there was not another bill that dealt with search and rescue in this manner. He maintained the two could not be put together. He thought what Senator Glaser was proposing might be a good idea. He said the point was there was no other bill that was talking about funding search and rescue.

SENATOR GLASER said Senator Mangan was correct. He said the only difficulty with the other bill was it would get rid of the opportunity to collect this money every year. He maintained that was the problem with the other bill. He said there were people who could put together some statistics on this bill and he could make recommendations to the committee on how to get revenue from the other bill.

SENATOR JOHN BOHLINGER asked Senator Glaser to provide the committee with the analytical data he was talking about by February 7.

SENATOR GLASER said he could do that if he had another member of the committee to help with the leg work.

SENATOR BOHLINGER asked Senator Gebhardt to work with Senator Glaser.

SENATOR GEBHARDT replied that information had been presented at the hearing. He said he would work on getting the bills coordinated.

SENATOR SQUIRES wanted to clarify that the other bill had no funding for search and rescue.

SENATOR GLASER replied there was no funding for search and rescue. The other bill got rid of the annual collection, so this bill would not have any money in it.

SENATOR SQUIRES said it was important to work that issue out, so there would be state wide funding for search and rescue.

SENATOR ELLIOT withdrew his motion.

SENATOR MANGAN asked Leanne Kurtz to look into the coordination instructions.

Leanne Kurtz said if she understood this, the coordinating instruction would say if both bills passed that this bill would change the dollar amounts.

SENATOR MANGAN withdrew his Do Pass as Amended motion.

SENATOR GEBHARDT said that someone in the hearing had said there was not enough money to support the amounts in the bill now. Even though it wasn't enough money, he thought those figures were all right for now and could be amended later. He asked it was still their pleasure to continue with an amendment.

SENATOR MANGAN said he would address an amendment, so the bills would not come back every session to raise the amounts.

SENATOR GLASER said he would hope the committee would give him and Senator Gebhardt the latitude to investigate the risk of putting a fee on a certain type of license, and bring that back to the committee.

SENATOR SQUIRES commented that maybe some funds could be attached to other licenses that may involve search and rescue efforts. She wasn't tied to that idea, it was just a suggestion.

SENATOR GLASER said he didn't know if they could come back with recommendations for additional places to come up with the money.

SENATOR ESP said this concept was contrary to the policy decision they had made in the last session to get rid of all the little pots of money going here there, and roll it into one place to simplify the process.

SENATOR BOHLINGER said they would postpone this till the sixth day of February.

EXECUTIVE ACTION ON SB 197

Motion: **SEN. LAIBLE** moved that **SB 197 DO PASS.**

Discussion:

SENATOR LIABLE said he was going to stand in support of the bill because he thought it clarified what the statute already said.

Vote: Motion **carried 10-1 with CROMLEY voting no.**

EXECUTIVE ACTION ON SB 191

SENATOR MANGAN said he had been investigating this and it was his understanding that there could be some changes in the way some child abuse cases where medicaid would be involved. He maintained if that happened medicaid records could not be destroyed for six years, and that would fly in the face of what this bill was trying to do. He said he was just made aware of this and if he could have a day or two to investigate the issues that could possibly surround that he would make a full report to the committee.

SENATOR ELLIOT said he believed Shirley Browne might be able to speak to those concerns.

SENATOR BOHLINGER, with the committees permission, invited Shirley Browne forward to comment on the concerns raised by Senator Mangan.

Shirley Browne said she was not real familiar with this issue. She said one of the things that they were trying to do was see if it was possible to get medicaid funding for part of the case management investigations for children who are possibly at risk of being abused or neglected. If they could use medicaid money to fund some of those investigation services, then it would become a medicaid service and there is a federal regulation that requires that medicaid records be kept for six years and two months.

SENATOR ELLIOT asked how that would affect the unfounded reports in this bill.

Shirley Browne suspected it probably did effect them. She thought they would have to figure out what would be considered medicaid and go form there.

SENATOR ELLIOT said if the department was required to keep the unfounded records for six years, the law would have to be changed.

Shirley Browne said she thought it would have to be. She said that the department could address this problem through rule making.

SENATOR ELLIOT believed the committee needed to know more. He said he was uncomfortable with reports that have been found to have no culmination of fact to be retained period.

SENATOR MANGAN said the department was trying to find creative ways to maximize their resources, and this was an unintended consequence. He said he would try to come back with something more informational to address these concerns.

SENATOR CROMLEY asked if there was a question if it would be appropriate to order the destruction of records in the possession of the county attorney and police officer.

Phoebe Olson said Senator Mangan had asked that question to Senator O'Neil in the hearing, he thought it would be best to have an amendment that clarified what would not be covered under this bill, and to deal with it in a different session.

SENATOR ELLIOT asked Senator Mangan to explore if Medicaid would accept records which did not contain identities.

SENATOR MANGAN said he would.

SENATOR BOHLINGER said that taking action on this bill today would be premature, and he said they should wait till they have more information.

EXECUTIVE ACTION ON SB 211

Motion/Vote: **SEN. LAIBLE** moved that **SB 211 DO PASS. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 222

Motion: **SEN. WHEAT** moved that **SB 222 DO PASS.**

Motion: **SEN. GLASER** moved that **AMENDMENT SB22201.ALK DO PASS.**

Discussion:

SENATOR BOHLINGER said the amendment addressed non-resident property owners and elections. He maintained that the amendment

stated that people who did not live at Big Sky could not participate in Big Sky elections.

SENATOR GLASER said he thought that under petition from the residents, other people may be allowed to vote.

Vote: Motion **carried unanimously.**

Motion: **SEN. GEBHARDT** moved that **SB 222 DO PASS AS AMENDED.**

Discussion:

SENATOR ELLIOT said he would like to offer a conceptual amendment. He would like lines 18 and 19 on page two to be struck, and the grammar adjusted accordingly. He said it would basically strike subsection C.

Motion: **SEN. ELLIOTT** moved that his **CONCEPTUAL AMENDMENT DO PASS.**

Discussion:

SENATOR ESP asked why Senator Elliot had offered that amendment.

SENATOR ELLIOT said for two reasons. One, it was not necessarily restrictive language, and two, there were enough lines in the code book anyway.

SENATOR GEBHARDT asked if that would allow a subdivision with 10 acre tracks and 300 people to form a village.

{Tape: 2; Side: A}

Mona Jamison, answered that resort areas have separate requirements in Title Seven chapter Six part 15. She only resort areas would qualify.

SENATOR ESP asked if the attempt was to limit this to Big Sky only.

Mona Jamison said it would apply to the other resort area, St. Regis. She said the grammar was critical.

Vote: Motion **carried unanimously.**

Motion: **SEN. ELLIOTT** moved that **SB 222 DO PASS AS AMENDED.**

SENATOR CROMLEY said he was concerned that the area was very political, and he worried that the way it was worded there would be the opportunity to pad the vote.

SENATOR BOHLINGER asked Mona Jamison to address his concerns.

Mona Jamison said she did not believe there were tax advantages to adding owners to property just to have more votes. She thought it was a fair question, but thought it was highly improbable.

SENATOR ESP asked if there were other local government municipalities in Montana where non-residents were allowed to vote.

SENATOR ELLIOT said he believed that there were occasions where property owners who were non residents could vote on certain things.

Mona Jamison said that was correct, many districts allow non resident land owners to vote, the reason being they pay property taxes.

SENATOR ESP asked if they were creating a district or a city.

Mona Jamison replied it would be town that could grow into a city.

SENATOR ESP wondered if there were any other towns where non residents were allowed to vote.

Mona Jamison replied she did not believe so.

Vote: Motion carried 9-2 with CROMLEY and ESP voting no.

EXECUTIVE ACTION ON SB 227

Motion: SEN. WHEAT moved that SB 227 DO PASS.

Motion: SEN. WHEAT moved that AMENDMENT SB022701.AMV DO PASS.

Discussion:

SENATOR WHEAT explained that the amendment strikes page four subsection G completely. He said the purpose of that was to make it clear that they were not trying to make the counties create their own maps, or adopt FEMA maps. He said the second amendment strikes line 27 and 28 on page 2. He said on page three it

strikes the word new, and inserts the word proposed. He thought these amendments helped to clarify the bill. He said he wanted to suggest some conceptual amendments as well. He said on page two, line 27, after flood way the words "which must" would be stricken and the word "may" would be inserted. So it would be clear that it was permissive for the counties, and not imposing a duty on them. He said the second amendment would be on page three, line 15 strike "elimination or reduction of inappropriate and unsafe new development". Then insert "protection of people and property".

Vote: Motion carried unanimously.

Motion: SEN. WHEAT moved that **HIS CONCEPTUAL AMENDMENT DO PASS.**

Leanne Kurtz repeated the conceptual amendment to make sure it was correct.

SENATOR GEBHARDT asked Leanne to repeat the amendment one more time.

Leanne Kurtz said on page two line 27, strike must and insert may, and on page 3 line 15, strike the word elimination through the word development, and insert protection of people and property. So subsection e would read "a strategy for the protection of people and property in areas susceptible to floods and in wild land urban interface areas."

SENATOR BLACK said this amendment did away with item 1 and 2 of amendment one.

Leanne Kurtz said just item two.

SENATOR MANGAN asked if they were making it permissive did they need to take requiring out of the title.

Leanne Kurtz replied yes.

SENATOR ESP said he was trying to make sense of what was left on line 27 after the words "which may".

Leanne Kurtz read what that section would say, "a growth policy must include maps and text describing an inventory of the existing characteristics and features of the jurisdictional area including if the department of natural resources and conservation is designated a flood plain and flood way pursuant to title 76 chapter 5 part 2 or the governing body has designated a flood plane or flood way pursuant to title 76 chapter 5 part 3

designated flood plane and flood way which may be included by reference.

Vote: Motion **carried unanimously.**

Motion: SEN. WHEAT moved that **SB 227 DO PASS AS AMENDED.**

SENATOR GEBHARDT wondered about the whole bill. He said the reason this came forward was the state had not offered the counties a model plan that they could insert their wording into. He had personally asked the state to do that, and they said they couldn't afford it. He said they had spent \$2,000 drafting this bill, and for that they could have had a simple growth plan put together that could have been available to the local communities and this could have been included. He was frustrated with the process. He said the counties needed a model to work by.

SENATOR ESP said he agreed with Senator Gebhardt. He did not think this was necessary. He thought it could be done in subdivision regulations. He thought the communities should be allowed to do this work on their level.

SENATOR LIABLE said he would also be in opposition to the bill. He said there was nothing in the current statutes that prevented counties from implementing the elements of this bill. He said it was important that they not make it any harder for counties to create growth policies.

{Tape: 2; Side: B}

SENATOR MANGAN said he would support the bill since it was amended to make it permissive. He thought it was important that the state direct what local governments do. He said they were already seeing counties not doing things because they had not specifically allowed them to and other counties doing things because they had not specifically told them not to. He said it didn't hurt for the state to say what should be looked at in growth policies using this definition and parameters. This bill wasn't saying they must, just that they may.

SENATOR ESP said he didn't think the amendments necessarily made this permissive. He thought it still read "must include".

SENATOR WHEAT said that Senator Esp was referring to language that was already in code. He thought the bill was a statement of what the policy was in this state. They were not dictating, they were just stating what they thought should be good sound development policy in these areas around wild land urban interface. He thought this was permissive and a policy decision

on how communities should be planning growth and development in their areas. He concluded they were not dictating, just stating what they thought to be good sound policy.

Vote: Motion **failed 5-6.**

Motion: SEN. ESP moved that **SB 227 BE INDEFINITELY POSTPONED.**

Vote: Motion **carried 6-5.**

ADJOURNMENT

Adjournment: 4:30 P.M.

SEN. JOHN C. BOHLINGER, Chairman

PHOEBE OLSON, Secretary

JB/PO

EXHIBIT (los20aad)